

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MEDITERRANEAN SHIPPING CO. S.A.  
and MEDITERRANEAN SHIPPING CO.  
(USA) INC.,

Plaintiff(s),

-against-

SARCONA MANAGEMENT, INC.,

Defendant(s).

**07-cv-10325 (Batts)**

AFFIDAVIT IN SUPPORT OF  
MOTION FOR DEFAULT

STATE OF NEW YORK     )  
                                      )  
COUNTY OF NEW YORK    )     ss.:

JORGE A. RODRIGUEZ, being duly sworn, deposes and says:

1. I am a member of the Bar of this Court and am associated with the firm of MAHONEY & KEANE, LLP, attorneys for plaintiffs in the above-entitled action and I am familiar with all the facts and circumstances in this action.

2. I make this affidavit pursuant to Rule 55.1 and 55.2(a) of the Civil Rules for the Southern District of New York, in support of plaintiffs' application for the entry of a default judgment against defendant SARCONA MANAGEMENT, INC.

3. Herewith attached are true copies of the following:

- (1). Summons and Complaint;
- (2). Affidavit of Service;
- (3). Statement of damages;
- (4). Supporting documentation;
- (5). Clerk's certificate; and

(6).Proposed order

4. Plaintiffs commenced this action to recover \$15,860.00 owed by defendants for unpaid per diem detention charges. (Ex. 1).

5. Jurisdiction of the subject matter is based on 28 USC § 1333 and admiralty/maritime jurisdiction. (Id.).

6. This action was commenced on or about November 14, 2007 by the filing of the summons and complaint. (Id.). The summons and complaint were served on defendant on November 20, 2007 by personally delivering said documents to Lenny Jones, authorized by appointment or law to receive service of process on behalf of defendant, at the defendant's place of business. (Ex. 2). Proof of service by the Special Process Server was filed. (Id.).

7. Mr. Larry M. Cole, Esq., of the law firm of STARR, GERN, DAVIDSON & RUBIN, PC., contacted the undersigned on behalf of defendant for the purpose of settling this matter. As a courtesy to Mr. Cole, the undersigned granted several extensions to the time within which defendant was required to file an answer or otherwise respond to plaintiffs' complaint.

8. On or about June 4, 2008, this Court issued an order to show cause, requiring plaintiff to submit an affidavit showing good cause why this matter should not be dismissed. Upon receipt of said order, the undersigned contacted Mr. Cole and asked that an answer be filed.

9. Mr. Cole responded by asking that the matter be settled rather than continuing with the litigation. In light of Mr. Cole's request, we continued to engage in settlement discussions.

10. Despite plaintiffs' numerous attempts to resolve the dispute, the parties have not been able to come to an agreement.

11. Having failed to reach an agreement, the undersigned submitted an affidavit in response to the Court's order, which stated that plaintiff would move for default unless an answer was filed by July 4, 2008.

12. We do note, however, that defendant has made payments during the interim totaling \$17,000. (Ex. 4). As such, the present amount in controversy is \$3,860.00. (Id.).

13. The defendants have not answered the complaint and the time for the defendants to answer the complaint has expired.

14. This motion seeks judgment for the liquidated amount of \$3,860.00, plus costs, fees and disbursements in the amount of \$414.95, for a total of \$4,274.95, plus interest at the legal rate in effect in this jurisdiction. (See annexed statement of damages).

15. The foregoing amounts are justly due and owing, no part of which has been paid. (Ex. 1, 3).

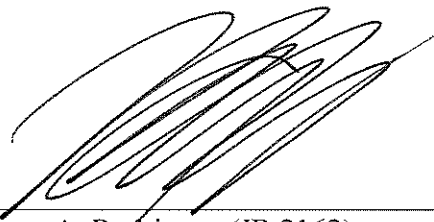
16. The defendant is not an infant or incompetent.

17. No part of the judgment sought has been paid by defendant, although duly demanded.

18. The disbursements sought to be taxed have been made in this action or will necessarily be made herein.

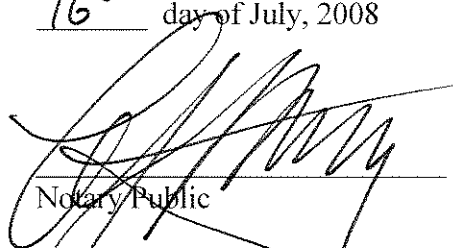
WHEREFORE, plaintiffs request the entry of Default and the entry of the annexed Judgment against defendant.

By:

  
\_\_\_\_\_  
Jorge A. Rodriguez (JR 2162)

Sworn to before me this

16<sup>th</sup> day of July, 2008

  
\_\_\_\_\_  
Notary Public  
CHRISTOPHER H. MANSUY  
Notary Public, State of New York  
No. 02MA4885684  
Qualified in New York County  
Commission Expires March 1, 2011

# Exhibit 1

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MEDITERRANEAN SHIPPING CO. S.A.  
and MEDITERRANEAN SHIPPING CO.  
(USA) INC.,

Plaintiff(s),

-against-

SARCONA MANAGEMENT, INC.,

Defendant(s).

SUMMONS IN A CIVIL ACTION

Case No. 07 CIV

10325

**TO:** (name and address of defendants)

SARCONA MANAGEMENT, INC.  
58 Jacobus Avenue  
Kearny, NJ 07032

**YOU ARE HEREBY SUMMONED** and required to serve on PLAINTIFF'S ATTORNEY  
(name and address)

MAHONEY & KEANE, LLP  
111 Broadway, 10<sup>th</sup> Floor  
New York, NY 10003  
(212) 385-1422

an answer to the complaint which is served on you with this summons, within **twenty (20)** days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

NOV 14 2007

**J. MICHAEL McMAHON**

CLERK

DATE

DEPUTY CLERK

JUDGE BATTS

07 CV 10325  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

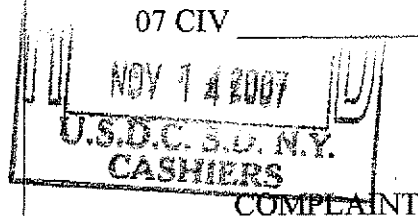
MEDITERRANEAN SHIPPING CO. S.A.  
and MEDITERRANEAN SHIPPING CO.  
(USA) INC.,

Plaintiff(s),

-against-

SARCONA MANAGEMENT, INC.,

Defendant(s).



PLEASE TAKE NOTICE that Plaintiff(s), MEDITERRANEAN SHIPPING CO. S.A. and MEDITERRANEAN SHIPPING CO (USA), INC., (collectively "MSC"), by their attorneys, MAHONEY & KEANE, LLP, as and for a Complaint against Defendant(s), SARCONA MANAGEMENT, INC. ("SARCONA"), allege, upon information and belief, as follows:

1. This is a case of admiralty and maritime jurisdiction within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. Jurisdiction is based upon 28 U.S.C. § 1333, as well as the Court's pendent, supplementary and ancillary jurisdiction.
2. Plaintiff MEDITERRANEAN SHIPPING CO. S.A. is a legal entity duly organized and existing pursuant to the laws of a foreign country.
3. Plaintiff MEDITERRANEAN SHIPPING CO. (USA) INC. is a legal entity duly organized and existing pursuant to the laws of the United States.
4. Defendant SARCONA is a business entity organized and existing pursuant to the laws of the United States with offices and a place of business located at 58 Jacobus Avenue, Kearny, NJ 07032.

5. The United States District Court for the Southern District of New York is the proper venue for this action, as Plaintiff MEDITERRANEAN SHIPPING CO. (USA) INC. resides and/or maintains a principal place of business in the Southern District of New York.

6. Plaintiffs sue on their own behalf and as agents and trustees on behalf of any other party who may now have or hereinafter acquire an interest in this action.

AS AND FOR A FIRST CAUSE OF ACTION AGAINST SARCONA

7. Plaintiff repeats and reiterates each and every allegation contained in paragraphs "1" through "6" as if specifically set forth herein at length.

8. At all times relevant herein, Defendant SARCONA entered into agreements, service contracts, contracts of affreightment, charter agreements and/or bills of lading, with Plaintiff for the carriage, storage, handling, care and/or maintenance of Defendant's cargoes by Plaintiff in consideration for payments by Defendant to Plaintiff for said services.

9. Plaintiff duly performed all duties and obligations required to be performed by Plaintiff in connection with Defendant's goods.

10. Defendant wrongfully, willfully, negligently and/or fraudulently breached the terms of the subject agreement(s) by, *inter alia*, failing to pay freight, demurrage, port fees, per diem charges, tariffs and other associated costs.

11. As a result of Defendant's breach of the subject agreements and Plaintiff has incurred, and will continue to incur, costs and expenses for which Defendant is liable under the terms of the agreements and at law.

12. Plaintiff has placed Defendant on notice of its claim that Defendant has breached the subject agreements and violated Plaintiff's rights under the law.

13. Despite Plaintiff's repeated demands, Defendant has failed to pay the Plaintiff's



damages due and owing under the agreements and at law.

14. By reason of the foregoing, Plaintiff has sustained damages in the amount of \$15,860.00, together with interest, costs, fees, and expenses.

AS AND FOR A SECOND CAUSE OF ACTION AGAINST SARCONA

15. Plaintiff repeats and reiterates each and every allegation contained in paragraphs "1" through "14" as if specifically set forth herein at length.

16. Defendant has an account stated with the Plaintiff.

17. By reason of the foregoing, Plaintiff has sustained damages in the amount of \$15,860.00, together with interest, costs, fees, and expenses.

AS AND FOR A THIRD CAUSE OF ACTION AGAINST SARCONA

18. Plaintiff repeats and reiterates each and every allegation contained in paragraphs "1" through "17" as if specifically set forth herein at length.

19. Plaintiff is due from Defendant the quantum meruit of Plaintiff's services.

WHEREFORE, Plaintiff prays:

(A). that judgment be entered in favor of Plaintiff for an amount exceeding **fifteen thousand eight hundred and sixty dollars \$15,860.00**, plus interest, fees, including attorneys' fees, costs, and disbursements;

(B). that Court process be issued against the Defendant; and

(C). that Plaintiff be granted such other and further relief as the Court may deem just and proper.

Dated: New York, New York

November 8, 2007

MAHONEY & KEANE, LLP  
Attorneys for Plaintiff(s)  
MEDITERRANEAN SHIPPING CO. S.A. and  
MEDITERRANEAN SHIPPING CO. (USA)  
INC.

By: 

Jorge A. Rodriguez  
111 Broadway, Tenth Floor  
New York, New York 10006  
Tel (212) 385-1422  
Fax (212) 385-1605  
Our File No. 12/3490/B/07/10

SERVICE LIST

SARCONA MANAGEMENT, INC.  
58 Jacobus Avenue  
Kearny, NJ 07032

# Exhibit 2

AO 440 (Rev. 10/93) Summons in a Civil Action

## RETURN OF SERVICE

SERVICE OF: **SUMMONS AND COMPLAINT**  
EFFECTED (1) BY ME: **MARK SACRIPANTI**  
TITLE: **PROCESS SERVER**

DATE: 11/20/2007 07:13PM

CHECK ONE BOX BELOW TO INDICATE APPROPRIATE METHOD OF SERVICE:

☐ Served personally upon the defendant:SARCONA MANAGEMENT INC

Place where served:

60 JACOBUS AVE SOUTH KEARNY NJ 07032☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left:LENNY JONESRelationship to defendant: MANAGING AGENT

Description of person accepting service:

SEX: M AGE: 36-50 HEIGHT: 5'4"-5'8" WEIGHT: 131-160 LBS. SKIN: WHITE HAIR: BROWN OTHER: \_\_\_\_\_☒ To the best of my knowledge, said person was not engaged in the U.S. Military at the time of service

## STATEMENT OF SERVER

TRAVEL \$ \_\_\_\_\_

SERVICES \$ \_\_\_\_\_

TOTAL \$ \_\_\_\_\_

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in this Return of Service and Statement of Server is true and correct.

DATE: 11/20/07

L.S.

SIGNATURE OF MARK SACRIPANTI  
GUARANTEED SUBPOENA SERVICE, INC.  
2009 MORRIS AVENUE  
UNION, NJ 07083

ATTORNEY: JORGE A RODRIGUEZ ESQ  
PLAINTIFF: MEDITERRANEAN SHIPPING CO S.A. ET AL  
DEFENDANT: SARCONA MANAGEMENT INC  
VENUE: DISTRICT OF NEW YORK  
DOCKET: 07 CV 10325

11/20/07  
Zuleyda Concepcion  
ZULEYDA CONCEPCION  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Oct. 2, 2011

# Exhibit 3

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MEDITERRANEAN SHIPPING CO. S.A.  
and MEDITERRANEAN SHIPPING CO.  
(USA) INC.,  
  
Plaintiff(s),  
  
-against-  
  
SARCONA MANAGEMENT, INC.,  
  
Defendant(s).

07-cv-10325 (Batts)

STATEMENT OF DAMAGES

Principal amount .....	\$3,860.00
Costs and Disbursements:	
Clerk’s filing fee.....	\$350.00
Process server fee.....	\$64.95
Total.....	\$4,274.95

# Exhibit 4

7/13/2007



**Mediterranean Shipping Company (USA) Inc.**  
420 Fifth Avenue  
New York, NY 10018 - 2709

**Account Number: PDSARC**

**Statement date: 7/13/2007**

**Per diem statement.**

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Account	Statement date	Outstanding
PDSARC	7/13/2007	\$20,860.00

SARCONA MANAGEMENT, INC.  
58 Jacobus Ave.  
South Kearny - NJ 07032



7/13/2007

Account Number: PDSARC

## Mediterranean Shipping Company (USA) Inc.

<u>Inv Date</u>	<u>Inv Number</u>	<u>Dr Amount</u>	<u>Cr Amount</u> #	<u>Outstanding</u>	<u>0-60</u>	<u>61-999</u>
22-Feb-06	NYC9060279914X	\$5,180.00		\$5,180.00		\$5,180.00
30-Jan-06	NYC9060146290X	\$5,540.00		\$5,540.00		\$5,540.00
27-Dec-05	NYC9051209992X	\$3,770.00		\$3,770.00		\$3,770.00
25-Nov-05	NYC9051182598X	\$3,950.00		\$3,950.00		\$3,950.00
17-Aug-05	NYC050889441X	\$2,420.00		\$2,420.00		\$2,420.00
<b>Total:</b>		<b>\$20,860.00</b>		<b>\$20,860.00</b>		<b>\$20,860.00</b>

*Your account is seriously overdue. If payment is not made within ten days, your trucks will be restricted from further pickup without any further notice. If you have any questions concerning your account, please call Per Diem Department at 212 7644800.*

*If payment was made within the last 15 days, please disregard this notice.*

SARCONA MANAGEMENT, INC.  
52 JACOBUS AVENUE  
SAATCHI SQUARE, NJ 07032

DATE  
05/23/2007

24034

PAY TO THE  
ORDER OF

\$

DOLLARS

Security Features. Details on back

SARCONA MANAGEMENT, INC.

MEMO

PAID TO THE ORDER OF  
SARCONA MANAGEMENT, INC.  
52 JACOBUS AVENUE  
SAATCHI SQUARE, NJ 07032

⑆024034⑆ ⑆221272303⑆ 608140179⑆8⑆

ALTERNATE SIGNATURE

SARCONA MANAGEMENT, INC.

24034

Accrual Basis

# Find Report

## All Transactions

Date	Num	Memo	Split	Amount
06/05/2008	26361	5325-0042 Sarcona Management, Inc. (LS)	Accounts Receivable	1,000.00
05/29/2008	26453	5325-0042 Sarcona Management, Inc. (LS)	Accounts Receivable	1,000.00
05/08/2008	26129	5325-0042 Sarcona Management, Inc. (LS)	Accounts Receivable	1,000.00
02/08/2008	25126	5325-0042 Sarcona Management, Inc. (LS)	Accounts Receivable	1,000.00
01/28/2008	25004	5325-0042 Sarcona Management, Inc. (LS)	Accounts Receivable	1,000.00
01/16/2008	24921	5325-0042 Sarcona Management Inc. (LS)	Accounts Receivable	1,000.00
01/03/2008	24859	5325-0042 Sarcona Management Inc.(LS)	Accounts Receivable	1,000.00
12/21/2007	24627	5325-0042 Sarcona Management, Inc. (LS)	Accounts Receivable	1,000.00
12/06/2007	24338	5325-0042 Sarcona Management, Inc. (LS)	Accounts Receivable	1,000.00
12/06/2007	24513	5325-0042 Sarcona Management, Inc. (LS)	Accounts Receivable	1,000.00
11/16/2007	24148	5325-0042 Sarcona Management, Inc. (LS)	Accounts Receivable	1,000.00
11/06/2007	23958	5325-0042 Sarcona Management, Inc. (LS)	Accounts Receivable	1,000.00
10/18/2007	24034	5325-0042 Sarcona Management, Inc.	Accounts Receivable	1,000.00
10/05/2007	23725	5325-0042 Sarcona Management, Inc.	Accounts Receivable	1,000.00
09/24/2007	23637	5325-0042 Sarcona Management, Inc.	Accounts Receivable	1,000.00
09/13/2007	23461	5325-0042 Sarcona Management, Inc.	Accounts Receivable	1,000.00
Total				16,000.00

# Exhibit 5

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MEDITERRANEAN SHIPPING CO. S.A.  
and MEDITERRANEAN SHIPPING CO.  
(USA) INC.,

Plaintiff(s),

-against-

SARCONA MANAGEMENT, INC.,

Defendant(s).

**07-cv-10325 (Batts)**

CLERK'S CERTIFICATE

I, J. MICHAEL MCMAHON, Clerk of the United States District Court for the Southern District of New York, do hereby certify that this action commenced on November 14, 2007 with the filing of a summons and complaint, a copy of the summons and complaint was served on defendants SARCONA MANAGEMENT, INC., by personally serving LENNY JONES, authorized by appointment or law to receive service of process, at defendants' place of business, and proof of such service thereof was filed on November 30, 2007.

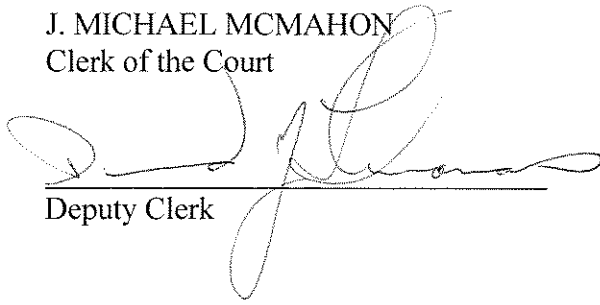
I further certify that the docket entries indicate that the defendants have not filed an answer or otherwise moved with respect to the complaint herein. The default of the defendants is hereby noted.

Dated: New York, New York

July 8, 2008

J. MICHAEL MCMAHON  
Clerk of the Court

By:

  
Deputy Clerk

# Exhibit 6

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MEDITERRANEAN SHIPPING CO. S.A.  
and MEDITERRANEAN SHIPPING CO.  
(USA) INC.,

Plaintiff(s),

-against-

SARCONA MANAGEMENT, INC.,

Defendant(s).

**07-cv-10325 (Batts)**

JUDGMENT OF DEFAULT

This action having been commenced on November 14, 2007, by the filing of the Summons and Complaint, and a copy of the Summons and Complaint in this action having been duly served on defendant SARCONA MANAGEMENT, INC., on November 20, 2007, by personally delivering copies of said documents to Lenny Jones, authorized by appointment and/or law to accept service on behalf of defendant, at defendant's principal place of business, and proof of service having been filed on November 30, 2007, and said defendant having failed to plead or otherwise defend this action, and the time for answering the Complaint having expired, it is,

ORDERED, ADJUDGED and DECREED: That plaintiffs have a judgment against defendant in the liquidated amount of **\$3,860.00**, the amount claimed, plus **\$414.95** in costs, disbursements and attorney fees, amounting in all to the sum of **\$4,274.95**, plus interest at the legal rate in effect on the date of this judgment; and, that the plaintiffs have execution therefor.

Dated: New York, NY

\_\_\_\_\_, 2008

By: \_\_\_\_\_  
U.S.D.J.

STATE OF NEW YORK :  
: SS.:  
COUNTY OF NEW YORK :

DONNA A. ANCONA, being duly sworn, deposes and says: I am not a party to the action, am over 18 years of age and reside in, Staten Island, N.Y.

On July 16, 2008, I served a true copy of the annexed **NOTICE OF MOTION WITH AFFIDAVIT IN SUPPORT OF MOTION FOR DEFAULT**

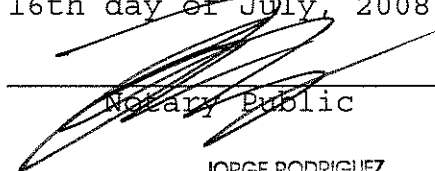
TO: STARR, GERN, DAVIDSON & RUBIN, P.C.  
Attorneys for Defendant  
SARCONA MANAGEMENT, INC.  
105 Eisenhower Parkway  
Roseland, NJ 07068  
Attn: Larry M. Cole, Esq.

SARCONA MANAGEMENT INC.  
60 Jacobus Avenue  
South Kearny, NJ 07032

by dispatching said papers, by Federal Express Priority Overnight delivery service.

  
DONNA A. ANCONA

Sworn to before me on this  
16th day of July, 2008.

  
\_\_\_\_\_  
Notary Public

JORGE RODRIGUEZ  
NOTARY PUBLIC  
State of New York No. 02RO6128023  
Qualified in New York County  
Term Expires 06/06/2009